

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10732 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KISHORCHANDRA RATILAL SOMAIYA

Versus

ENTERTAINMENT TAX COMMISSIONER

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Appearance:

MR YS LAKHANI for Petitioner

MRS SIDDHI TALATI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/09/97

ORAL JUDGMENT

1. This Special Civil Application has been filed under the provisions of Gujarat Entertainment Tax Act, 1976 against the order of Mamlatdar dated 13.5.91 under which the petitioner was directed to pay the entertainment tax and the penalty totalling Rs.16,065/- which has been imposed on the petitioner as on 11.2.91, the inspecting officer found that number of spectators in

the cinema were without tickets. Against this order, the petitioner filed an appeal before the Entertainment Tax Collector, Rajkot, which appeal was dismissed under the order dated 24th December 1992. The petitioner therefore preferred revision application before the Entertainment Tax Commissioner which too came to be dismissed under the order dated 24th June 1993. Hence this Special Civil Application.

2. One of the contentions raised by learned counsel for the petitioner is that on the day on which the appeal filed by the applicant has been decided, by the Entertainment Tax Collector, the respondent No.2 herein, a request has been made by the petitioner for adjournment of the appeal through his advocate but the same was not acceded to. This request should not have been declined. Even if the request has been declined, the appeal should have been decided on merits after considering the grounds taken by the petitioner in the memo of appeal.

3. On the other hand, the learned counsel for respondent-State, Ms.Siddhi Talati contended that the petitioner, in the appeal, only tried to delay the matter. Even he had not appeared before the Mamlatdar and this conduct of the petitioner itself is justified to decline the prayer for adjournment made by petitioner. The order made by Tax Collector, Rajkot is affirmance of the order of lower authority and as such, no reasons are required to be given.

4. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

5. The prayer of adjournment has been declined and I do not find any illegality in appellate authority in doing so as the petitioner, in the appeal, had not furnished any good, bad, or indifferent ground for adjournment. Otherwise also, from the order of appellate authority, it comes out that time and again adjournments have been prayed for by petitioner and the appellate authority had granted adjournments. However, the appellate authority should have considered the matter on merits and the grounds taken in the memo of appeal should have been noticed and then a reasonable speaking order should have been passed.

6. This Court has granted interim relief in favour of petitioner and under the Court's order, the petitioner has already deposited Rs.8,000/- with the respondent No.3. Moreover, 20% of the total amount claimed by respondent has also been further deposited with appellate

authority as it is a condition precedent for maintainability of the appeals.

7. In the result, this Special Civil Application is allowed and the order of the appellate authority, i.e. the Entertainment Tax Collector, Rajkot, is set aside. The appellate authority is directed to decide the appeal filed by the petitioner on merits after hearing the petitioner or his representative, if present. If nobody is present on the date of hearing, the appellate authority shall decide the matter by passing a speaking order. The petitioner is directed to appear personally or through his advocate or representative before the appellate authority on 17th November 1997. The appellate authority will not give any notice to the petitioner for appearance on 17th November 1997, as this order itself is a notice for his appearance. The demand for remaining amount shall remain stayed till the appeal is finally decided.

8. Rule made absolute subject to aforesaid observations. No order as to costs.

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(sunil)